



MICHIGAN COUNCIL ON CRIME AND DELINQUENCY

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House Judiciary Committee
June 9, 2010

Testimony Submitted by Michelle Weemhoff
Supporting Juvenile Competency Legislation (HB 5175; 5482-5489)

Thank you for taking time to hear legislation on juvenile competency in delinquency proceedings. My name is Michelle Weemhoff and I am the Senior Policy Associate with the Michigan Council on Crime and Delinquency, whose mission is to improve the effectiveness of policies and systems addressing the prevention and control of crime and delinquency. I also staff the Michigan Juvenile Justice Collaborative and served this past year as the Co-Chair of the workgroup on juvenile competency.

The Supreme Court case, *Dusky v. United States*, 362 U.S. 402 (1960), affirmed a defendant's right to receive a competency evaluation before proceeding to trial, noting that an individual accused of a crime is not competent to stand trial if they lack "sufficient present ability to consult with a lawyer with a reasonable degree of rational understanding - and... a rational as well as factual understanding of proceedings against him."

According to the Mental Health Code, adults and youth being tried as adults in Michigan's criminal justice system may receive a competency evaluation from experts at the MDCH's Forensic Center or the Hawthorn Center, an inpatient psychiatric facility for children and adolescents. Youth in the juvenile justice system, however, do not have access to the Forensic Center or Hawthorn Center. In fact, current Michigan Law does not address how courts are to determine whether a youth in the juvenile justice is competent.

According to the Michigan appellate decision *In re Carey* (2000), "Juveniles have a due process right not to be subjected to the adjudicative phase of juvenile proceedings while incompetent." *Carey* held that, in the absence of statutory provision governing juvenile competency, a juvenile's due process right could be protected using the Mental Health Code provision for adult competency determinations (*MCL 330.2020, et seq.*).

The *Carey* decision specifically stated: "Accordingly, we further hold that, in juvenile competency hearings, competency evaluations should be made in light of *juvenile*, rather than adult norms." Conventional standards for competency have typically focused only on the effects of mental illness or developmental disability on an individual's ability to understand and participate in his/ her defense; yet emerging research indicates a necessity to further consider a child's lesser capacities owing to biological, emotional, and psychological immaturity.¹

¹ MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice. Issue Brief 1: Adolescent Legal Competence in Court.



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In May 2006, the Thomas Cooley Law School and DHS Juvenile Justice Workgroup sponsored a Symposium on Culpability and Competency of Juveniles, presenting material which examined how several other states have addressed these issues. The Symposium launched interest among the Michigan Juvenile Justice Collaborative, who formed a diverse workgroup to review other state laws and draft ideas for possible legislation. The work of this group led to the introduction of bills during the last legislative session. Earlier this year, the Michigan Juvenile Justice Collaborative pulled together an even broader workgroup of juvenile justice stakeholders – including judges, prosecutors, criminal defense attorneys, mental health professionals, child advocates, and associations - to further examine the bills and refine them to only address juvenile competency.

As a workgroup, we tackled four primary issues of the bills:

- Defining “juvenile competency” in a way that considers how the traditional Dusky standard may be adapted in a juvenile court;
- Setting an age of presumed incompetence, below which a child would not be prosecuted;
- Clarifying the qualifications of the examiner to ensure forensic and clinical expertise in child and adolescent evaluations;
 - The Michigan appellate decision *In re Blackshear* (262 Mich App 101, 2004) held that the Probate Court (now the Family Division of Circuit Court) has no authority under the Mental Health Code to order a Community Mental Health (CMH) Agency to arrange and pay for an juvenile competency evaluation. Thus the courts are left to make their own determinations about who is qualified.
- And determining how to provide restoration services if a child is found incompetent.

To answer these questions, the workgroup reached out to Dr. Tom Grisso of the University of Massachusetts Medical School, Law and Psychiatry Program. Dr. Grisso is the national leading expert on juvenile competency and advisor to the MacArthur Foundation’s Research Network on Adolescent Development and Juvenile Justice. Through a request from Representative Schuitmaker’s office, Dr. Grisso has provided a memo to the members to this Committee that outlines what the research tells us and how other states have used this research to address similar legislation.

This bill package is solely intended to address the court procedures for ensuring due process around juvenile competency; yet it must be noted that juvenile justice is often an ad hoc mental health system for kids who have fallen through the cracks. I regularly hear stories from parents who were instructed by Community Mental Health workers to file charges against their own children in order to access mental health services available only to adjudicated delinquents. I have also heard anecdotes of jurists expressing a moral obligation to adjudicate in order to provide services, even in cases in which the psychiatrist, defense attorney, and prosecutor recognized the child as incompetent.



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The question is continually asked, “What do we do with a child who is incompetent but needs services?” While the answer to this question may be complicated given our lacking mental health resources, the Constitutional answer is quite simple – we cannot prosecute a child who is incompetent. Certainly, we must explore restoration options that would stabilize or educate a child about the court process so that his case could be resumed. However, restoration is not to be confused with treatment. Although mental health reform is beyond the scope of this bill, it is important to note that the gap in mental health services places an extraordinary burden on our courts to choose between affording a child his due process rights or providing a child an avenue to access critical mental health services.

Given the current limitations to accessing mental health services, the workgroup focused its energy on developing guidance that could be reasonably adopted across counties that have differing resources and varied specialty among its mental health workforce. It is my hope that these bills provide a research-driven approach to the way in which we protect the rights of our youngest and most vulnerable citizens. Thank you for the opportunity to speak and I welcome any questions you may have.

Respectfully submitted,

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